IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO.99 OF 2006

IN

SUIT NO.833 OF 2004

...

K L M Royal Dutch Airlines ...Plaintiff

v/s.

Mr.Sheetal Joshi ...Defendant

...

Mr.Ashwin Ankhad i/b Ashwin Ankhad & Associates for the Plaintiff.

Mr.Satish Shah i/b Yashpal Jain for the Defendant.

...

CORAM: D.K.DESHMUKH, J.

DATED: 18TH JULY, 2006

P.C.:

1. The Plaintiff has filed this suit for recovery of certain amounts from the Defendant. The Plaintiff claims that the Defendant was the agent of the Plaintiff-Airline for sale of the tickets.

2. The defence of the Defendant is that there is no privity of contract between the Plaintiff and the Defendant. The Plaintiff relies on the document at Exh.D to the rejoinder filed by the Plaintiff. That document is Passenger Sales Agency Agreement. Clause (1) of that agreement says that "this Agreement shall become effective between the Agent and the Carrier upon appointment of the Agent by such Carrier in accordance with the Sales Agency Rules in effect in the country(ies) of the Agent’s Location(s)". It means that the agreement regarding Passenger Sales Agency Agreement between the carrier and the agent comes into effect after the carrier appoints the agent in accordance the Sales Agency Rules. Perusal of the same agreement shows that the Sales Agency Rules are part of Handbook. Therefore, unless and

until the Plaintiff satisfies the Court that in accordance with the Sales Agency Rules the Plaintiff, which is the carrier, had appointed the Defendant as its agent, the terms of the Passenger Sales Agency Agreement will not become effective between the Plaintiff and the Defendant.

3. The learned Counsel appearing for the Plaintiff is unable to point out to me the Sales Agency Rules. He is also unable to point out that in accordance with those Rules the Plaintiff appointed the Defendant as its agent. Therefore, it appears that there is substance in the defence that is raised by the Defendant and therefore, the Defendant is entitled to leave to defend the suit unconditionally. Suit be, therefore, transferred to commercial cause list. Written statement to be filed within eight weeks from today.

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